NO. 92-8346

In the Supreme Court of the United States

OCTOBER TERM, 1993

TERRY LEE SHANNON
PETITIONER

VS.

UNITED STATES OF AMERICA
RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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For Respondent

Petition for Certiorari Filed April 12, 1993
Petition for Certiorari Granted November 1, 1993

TABLE OF CONTENTS

APPENDIX A

DATE CRE90-170-S 1 Master Docket-Multiple Defendant Case
Proceedings Docket for Single Defendant

V. PROCEEDINGS

12/18/90	MOTION (D)	For Psychiatric Evaluation (copy given to Judge)	12/18/90	8
12/27/90	AMENDED MOTION(D)	For Psychiatric Evaluation (copy given to judge)		9
04/15/91	CJA21 APPROVAL (court order)	(LTS 12/20/91) For Psychiatric Evaluation (original CJA21 mailed to atty for deft)		11
07/15/91	TAPE	Of Arraignment held 07/12/91 before Mag. Gillespie,. (tape placed in accordion file)		
	ORDER	(NLG 07/12/91 Trial set for 09/16/91 in Aberdeen before Judge Senter, Discovery by 07/22/91; & Pretrial Mots by 08/01/91; Plea Agreements by 08/30/91.		13

PROCEEDINGS (continued)

07/16/91	MOTION(G)	for Psychiatric Examination of Deft. (copy given to Judge)	07/1691	14
07/26/91	ORDER	(LTS 07/26/91) That the Motion For Psychiatric Exam is SUSTAINED. (copies given to USM & ccert. copies of Indict. & Order mailed to MCFP Springfield)	07/26/91	17
09/06/91	NOTICE	JURY TRIAL/MVD Have Been Cancelled Until Further Order of the Court.		
02/10/22		JURY TRIAL		
09/27/91	RETURN	Deft, delivered to U.S. Penitentiary at Atlanta on 08/03/91 & returned to Laf. Cty. Jail on 09/25/91.		20

DATE CRE90-170-S 1 JURY TRIAL
02/10/92

PROCEEDINGS (continued)

11/14/91	NOTICE	Hrg. on Motion of Deft To Determine Competency, 12/03/91 @ 1:30 PM, Oxford before Judge Senter.		
	NOTICE	MVD/JURY TRIAL, 01/06/92 @ 9:40 AM, Aberdeen before Judge Senter.		
11/15/91	ORDER	(LTS 11/14/91) that a competency hrg. be held 12/03/91 @ 1:30 PM in Oxford & that the trial is cont until 01/06/92 @ 9:40 AM in Oxford. Time Excl.	11/15/91	24
11/20/91	FORENSIC	Evaluation		26
12/19/91	CR/MIN	Competency hrg. held 12/12/91. Court found deft is competent to stand trial. Trial to be reset.		41

DATE			
	JURY TRIAL	CHANGE OF PLEA 02/10/92 SENTENCING 4-16-92	
02/14/92	CR/MIN	Of Jury Trial held 02/10/91 - 02/11/92. Verdict - Ct. 1 - Guilty. Deft in custody of USM. Sent date left open. Mot of deft for judgment of acquittal DENIED.	71
	JURY INS.	GIVEN	74
	JURY INS.	Refused	92
	NOTE	From Jury fld 02/11/92	115
	VERDICT	GUILTY	117
04/21/02	JUDGMENT	*(LTS 04/21/92) (sent 4/16/92) (J/C BK #28, pgs. 10-13, Entered 04/22/92) Ct. 1 - 15 yrs. impr. Supervised Released - 5 yrs. Special Assess - $50. DKTD 04/22/02	129
02/04/92	JUDGMENT	Issued As Mandate-AFFIRMED	142
	SLIP	Opinion	
04/22/92	NOTICE	Of Appeal (copies given to all concerned)	133

DATE			
11/10/93	**ORDER**	**From the Supreme Court of the United States. GRANTING** Motion to Proceed in Forma Pauperis and **GRANTING** Petition for Writ of Certiorari. (Letter from Court of Appeals requesting file be mailed to the Supreme Court). (copies given to all concerned) sjh	156
	MAILED	**ORIGINAL PLEADINGS, ETC TO THE SUPREME COURT OF THE UNITED STATES.** sjh	

APPENDIX B

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

FILED
NOV 30, 1990

UNITED STATES OF AMERICA

V.

TERRY LEE SHANNON

CRIMINAL NO. CRE90-170
18 U.S.C. § 922(g)
18 U.S.C. § 924(e)(1)
18 U.S.C. § 3571(b)(3)

INDICTMENT

The Grand Jury charges that:

COUNT ONE

On or about the 25th day of August, 1990, in the Northern District of Mississippip, the defendant, TERRY LEE SHANNON, having previously been convicted of three (3) or more crimes by the Circuit Courts of Lee and Prentiss County, Mississippi, on September 17, 1982, October 28, 1982 and September 6, 1988, each punishable by imprisonment for a term exceeding one year, knowingly did possess in and affecting commerce a firearm, to wit: a Sterl-

ing Arms, 22 L.R. caliber pistol, Serial Number A38815, which had previously been transported in interstate commerce, in violation of Title 18, United States Code, Sections 922(g), 924(e)(1) and 3571(b)(3).

(nm $250,000 and nl 15 years without probation, parole, or suspension of sentence)

A TRUE BILL

/s/ Curt Jones
FOREPERSON

/s/ Alfred E. Moreton, III
Asst. UNITED STATES ATTORNEY

APPENDIX C

1.05

[75]

You, as jurors, are the judges of the facts. But in determining what actually happened—that is, in reaching your decision as to the facts—it is your sworn duty to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you, regardless of the consequences.

It is also your duty to base your verdict solely upon the evidence, without prejudice or sympathy. That was the promise you [76] made and the oath you took before being accepted by the parties as jurors, and they have the right to expect nothing less.

APPENDIX D

1.21

[81]

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. It should not enter your consideration or discussion.

APPENDIX E

G. 14

[88]

The defendant claims that he was insane at the time of the events alleged in the indictment. If you conclude that the government has proved beyond a reasonable doubt that the defendant committed the crime as charged, you must then consider whether the defendant should be found "not guilty only by reason of insanity."

The defendant was insane as the law defines that term only if, as a result of a severe mental disease or defect, the defendant was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

On the issue of insanity, it is the defendant who must prove his insanity by clear and convincing evidence. You should render a verdict of "not guilty only by reason of insanity" if you are persuaded by clear and convincing evidence that the defendant was insane when the crime was committed.

Remember, then, that there are three possible verdicts in this case: guilty, not guilty, and not guilty only by reason of insanity.

THIS IS 1.33 of
5th Cir. Patterns

APPENDIX F

We want you to explain the reason of insanity.

Filed

This 11 day of Feb., 1992

Norman L. Gillespie, Clerk

By; /s/ Eugene F. Bradley

Deputy Clerk

Steve Autry
02/11/92

APPENDIX G

[115] TO THE MEMBERS OF THE JURY:

In response to your request, I am enclosing the instruction of law on insanity that I read to you in the courtroom.

This instruction is to be considered by you with all other instructions I orally gave you during the charge.

Date: Feb. 11, 1992 /s/ L. T. Senter, Jr.
CHIEF JUDGE

[116] The defendant claims that he was insane at the time of the events alleged in the indictment. If you conclude that the government has proved beyond a reasonable doubt that the defendant committed the crime as charged, you must then consider whether the defendant should be found "not guilty only by reason of insanity."

The defendant was insane as the law defines that term only if, as a result of a severe mental disease or defect, the defendant was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

On the issue of insanity, it is the defendant who must prove his insanity by clear and convincing evidence. You should render a verdict of "not guilty only by reason of insanity" if you are persuaded by clear and convincing evidence that the defendant was insane when the crime was committed.

Remember, then, that there are three possible verdicts in this case: guilty, not guilty, and not guilty only by reason of insanity.

APPENDIX H

[117]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF MISSISSIPPI

FILED
FEB 14 1992

UNITED STATES OF AMERICA
V.

VERDICT
CASE NUMBER:
CRE 90-170-S

TERRY LEE SHANNON

WE, THE JURY, FIND:

The defendant Terry Lee Shannon as to Count 1 of the Indictment

GUILTY

**PLEASE PLACE ONE OF THE FOLLOWING IN THE SPACE PROVIDED:

1) Guilty

2) Not Guilty

3) Not Guilty Only By Reason of Insanity.

/s/ Steve A. Autry — 2/11/92
FOREPERSON'S SIGNATURE — DATE

APPENDIX I

[129]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF MISSISSIPPI

FILED
APR 21 1992

UNITED STATES OF AMERICA

V.

TERRY LEE SHANNON

(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE
(for Offenses Committed On or After November 1, 1987)

Case Number:
CRE90-170

Thomas Trout
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)_____

☐ was found guilty on count(s) 1 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18/922(g)(1) and 924 (e)(1)	POSSESSION OF A FIREARM BY A PERSON WITH THREE (3) PRIOR CONVICTIONS PUNISHABLE BY TERM OF IMPRISONMENT EXCEEDING ONE (1) YEAR	08/25/90	1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

☐ Count(s)_____(is)(are)dismissed on the motion of the United States.

☒ It is ordered tht the defendant shall pay a special assessment of $ 50, for count(s) 1 , which shall be due ☒ immediately ☐ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 587-42-1839
Defendant's Date of Birth: 03/04/54
Defendant's Mailing Address:
526 NORTH GREEN
TUPELO, MS 38801

Defendant's Residence Address:
526 NORTH GREEN
TUPELO, MS 38801
J/C BK #28

APRIL 16, 1992
Date of Imposition of Sentence

/s/ illegible
Signature of Judicial Officer

L.T. SENTER, JR.,
CHIEF U.S. DISTRICT JUDGE
Name & Title of Judicial Officer

4/21/92
Date

Entered 4/22/92

APPENDIX J

[130]
Defendant: TERRY LEE SHANNON
Case Number: CRE90-170

Judgment-Page 2 of 4

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FIFTEEN (15) YEARS.

☒ The Court makes the following recommendations to the Bureau of Prisons:

THE COURT RECOMMENDS THAT THE DEFENDANT BE INCARCERATED IN A FACILITY WHERE HE CAN RECEIVE MENTAL HEALTH TREATMENT AND THERAPY.

☒ The defendant is remanded to the custody of the United States marshal.

☐ The defendant shall surrender to the United States marshal for this district,

☐ at _____ a.m. / p.m. on _____

☐ as notified by the United States marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

☐ before 2 p.m. on _____

☐ as notified by the United States marshal.

☐ as notified by the probation office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By: _____
Deputy Marshal

[131]
Defendant: TERRY LEE SHANNON
Case Number: CRE90-170

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of *FIVE (5) YEARS.*

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☒ The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

☒ The defendant shall not possess a firearm or distructive device.

THE DEFENDANT SHALL PARTICIPATE IN A PROGRAM FOR THE TREATMENT OF SUBSTANCE ABUSE, TO INCLUDE TESTING TO DETERMINE WHETHER OR NOT THE DEFENDANT HAS REVERTED TO THE USE OF DRUGS OR ALCOHOL, UNDER THE DIRECTION OF THE PROBATION OFFICER.

THE DEFENDANT SHALL PARTICIPATE IN A MENTAL HEALTH PROGRAM APPROVED BY THE PROBATION OFFICER.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquires by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work reguarly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphemalia related to such substances except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an enformer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

[132]
Defendant: TERRY LEE SHANNON
Case Number: CRE90-170

Judgment-Page 4 of 4

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the facutal findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 10
Criminal History Category: VI
Imprisonment Range: 15 years
Supervised Release Range: 3 to 5 years
Fine Range: $ 2,000 to $20,000

☒ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: $ _____

☐ Full restitution is not ordered for the following reason(s):

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following reason(s):

APPENDIX K

JURY INSTRUCTION CONFERENCE [254]

THE COURT: All right. Sylvia. Tom, you got anything else?

MR. TROUT: Yes, your Honor, I do. The last question, Your Honor, is — I have the instruction roughed out out — is the issue of what the jury knows or should know about punishment. I mean, excuse me, about what would happen to the defendant in the event that he is found not guilty only by reason of insanity. And it seems to me that we need an [255]instruction, which I request, somewhat in this terminology that "In the event it is your verdict that the defendant is not guilty only by reason of insanity, it is required that the Court commit the defendant," or perhaps it should say "you should know that it is required that the Court commit defendant to a suitable hospital facility until such time as the defendant does not pose a substantial risk of bodily injury to another or serious damage to the property of another."

THE COURT: By the way, what is the law?

MR. MARTIN: The law is, as we can determine it, Judge, and we've got one brand new case from March of '91 just out of the Vermont District. We do have a Fifth Circuit case and another out of the Eleventh Circuit that says it's not supposed to be mentioned. Cannot mention it.

MR. TROUT: What cases do you have?

THE COURT: Is that just punishment or does that go to —

MR. MARTIN: What would happen in the event of a not guilty by reason of insanity. Just can't be mentioned.

MR. BUCHANAN: Said they're only concerned with guilty or innocence, not to any punishment whatsoever.

MR. MARTIN: *United States v. Beioncheny,* 759 F.Supp. 1081, March 18th, 1991. And the Eleventh Circuit is *Boykins v. Wainright,* which is September 7th, '84. That's the Eleventh Circuit. And both states the same thing.

[256] MR. TROUT: All right. The '84 decision is going to predate—is it under the Act as it now reads, the '84 decision, the Eleventh Circuit decision?

MR. MARTIN: Yes. As far as stating that the trial court erred in refusing to instruct the jury on consequences of a verdict of not guilty by reason of insanity does not deny the petitioner of a fundamental fair trial.

MR. TROUT: I've got some cases, Your Honor, I want to call to the Court's attention on this. The Eighth Circuit has done something that's a little bit unusual. They, in the case of *United States v. Neavill,* 868 F.2d 1000, the Eighth Circuit decided that the defendant was entitled to have an instruction go to the jury informing them what would happen to him in the event they found him not guilty only by reason of insanity.

Now, that decision was vacated and for an en banc consideration. After that, vacating the decision, the defendant dismissed his appeal. Sounds to me like the United States of America was at work there. So the government probably gave him some kind of special deal so they didn't have this precedent come down. But, in any event, whatever happened, after the decision was vacated, there was no en banc rehearing because the appeal was dismissed.

Now, later, in *United States v. Kristianse,* which is 901 F.2d 1463, Eighth Circuit, 1990 decision, the Eighth [257]Circuit cited — well, they cited *United States v. Neavill* and approved a trial court's instruction to the jury informing them of what would happen in the event of not guilty by reason of insanity.

THE COURT: They cited a vacated.

MR. TROUT: Yes, sir. In the footnote, the footnote says the instruction was based on *U.S. v. Neavill,* which held that an instruction explaining the consequences of acquittal by reason of insanity must be given. Rehearing en banc was granted vacating the panel opinion. We subsequently granted Neavill's motion to dismiss the appeal entirely. That's all they say down here.

THE COURT: It's the same circuit.

MR. TROUT: It's the same circuit. And they approved, my reading of the case, they approved what they had done in *United States v. Neavill.* And that the trial court in this case — I don't want to overstate what the Court did, Your Honor.

THE COURT: Let me tell you what the problem with it is. It's one thing to simply say that in the event, you know, you find the defendant not guilty only by reason of insanity, the Court will commit him. That's just not the end of it. The statutory scheme goes on to tell how a defendant, you know, it's got to be reviewed first of all. His commitment, how he may petition the Court, the Court appoint counsel and experts [258]to examine him and conduct a hearing to see whether or not he has regained his mental faculties to the point where he doesn't pose a danger to others, and what have you. You see, it really would be something that would have to be carefully thought out, if that type thing were allowed.

Is that the only circuit that you could find?

MR. TROUT: Yes, sir. I didn't—Your Honor, the Eleventh Circuit decision, I believe that the government's referring to, if I'm not mistaken, that case dealt with an offense which took place before the Insanity Reform Act actually came into play. So they found in that decision, if I'm not mistaken, that that defendant just didn't come within the terms of the Act. So they never had to address whether an offense committed after that date would permit or require such an instruction.

And I will say this, that in this case that I have just called to the Court's attention, the Eighth Circuit case, *Kristiansen,* the Eighth Circuit, in my view, approved of the trial court's giving the instruction in that decision which informed the jury of what would happen to the defendant in the event that he was found not guilty only by reason of insanity. It appears to me, despite the Eighth Circuit's vacating of their decision —

THE COURT: Okay. You got your point across. Let me hear the response.

[259]MR. MARTIN: Judge, we do have some Fifth Circuit cases. They're older cases. One is from 1970, *United States v. Deltoro,* 426 F.2d 181. And the other one is *United States v. McCrackin,* found at 488 F.2d 406. And both of them say, they have been, to my knowledge, have been Shepardized and are still good law, that it is the jury's province to decide guilty or not guilty. And the question of sentencing or anything occurring thereafter should not come into play. That is not within their province. It's not a issue of guilty or not guilty.

THE COURT: I think it is entirely inconsistent. You know, I can understand a defendant wanting, in some instances, the jury to know that he's going to be put away when you say that. But, you know, that is inconsistent with the Court's teachings, the Appellant Court telling the trial courts that, you know, it is the jury's function to determine guilt or innocence or not guilty only by reason of insanity. To me it's inconsistent to say they ought to be told what's going to happen. The same rationnale would be, well, they ought to be told if this man's just a first offender, well, he has a likelihood of probation or one or two years or what have you. And that's simply not the law.

I'm going to refuse to grant an instruction telling the jury what will happen to this defendant if — or what the law on insanity is in the event they should bring back a not [260] guilty only by reason of insanity verdict.

MR. TROUT: Your Honor, I have not submitted a

written instruction. I dictated one which the court reporter took a moment ago. Is that satisfactory?

THE COURT: Yes, I think you've clearly made your record, and I'm making a record right now, and it's going to be up to the judgment of three judges on the Court of Appeals to see whether or not they want to, shall we say, change or restructure the law of the Fifth Circuit and of the country. If they want to, it's fine with me.

Anything else? We have now been 45 minutes in this jury instruction conference. We've got a jury waiting, so let's move on. Are you ready?

MR. TROUT: Yes, sir.

Court's Charge To Jury

[261]Now, you as jurors are the judges of the facts. But in determining what actually happened, that is, in reaching your decision as to the facts, it is your sworn duty to follow all of the rules of law as I explain them to you. You have no right to disregard or give special attention to any one instruction or to question the wisdom or correctness of any rule I may state to you. You must substitute or follow [262] your own notion or opinion as to what the law is or ought to be. It is your duty to apply the law as I explain it to you regardless of the consequence.

It is also your duty to base your verdict solely upon the evidence without prejudice or sympathy. That was the promise you made and the oath you took before being accepted by the parties as jurors. And they have the right to expect nothing less from you.

[268]

If a defendant is found guilty, it will be my duty to decide what the punishment will be. You should not be concerned with punishment in any way. If should not enter your consideration or discussion.

[269]The defendant claims that he was insane at the time of the events alleged in the indictment. If you conclude that the government has proved beyond a reasonable doubt that the defendant committed the crime as charged, you must then consider whether the defendant should be found not guilty only by reason of insanity.

The defendant was insane as the law defines that term only if as a result of a severe mental disease or defect the defendant was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

On the issue of insanity, it is the defendant who must prove his insanity by clear and convincing evidence. You should render a verdict of not guilty only by reason of insanity if you are persuaded by clear and convincing evidence that the defendant was insane when the crime was committed.

Remember then that there are three possible verdicts in this case: Guilty, not guilty, and not guilty only by reason of insanity.

APPENDIX L

UNITED STATES of America,
Plaintiff-Appellee,

v.

Terry Lee SHANNON,
Defendant-Appellant.

No. 92-7294.

United States Court of Appeals,

Fifth Circuit.

Jan. 12, 1993.

Appeal from the United States District Court for the Northern District of Mississippi.

Before WILLIAMS, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

JERRE S. WILLIAMS, Circuit Judge:

Terry Lee Shannon appeals his conviction for firearm possession. Shannon pleaded insanity at his trial, and the district court instructed the jury on the insanity defense. The court, however, refused to instruct the jury about the mandatory commitment procedures that accompany a jury verdict of "not guilty only by reason of insanity" ("NGI"). Shannon contends that the court's refusal to reveal the required disposition of a defendant acquitted because of his

insanity was error in light of the Insanity Defense Reform Act of 1984, 18 U.S.C. §§ 4241-4247 ("IDRA" or "Act"). We affirm the district court's decision. We agree that district courts possess no discretion to offer such instructions.

I. FACTS AND PRIOR PROCEEDINGS

The principal facts are uncontroverted and largely stipulated. At about 4:00 a.m. on the morning of August 25, 1990, Sergeant Marvin Brown of the Tupelo Police Department was on roving patrol and stopped Shannon as he walked down a Tupelo street. The officer told Shannon that a detective wanted to speak with him and asked Shannon to accompany him back to the station. Shannon then told Sergeant Brown that he did not want to live anymore, whereupon he walked across the street, pulled a pistol from his coat or shirt, and shot himself in the chest. The wound was not fatal.

Shannon had acquired the gun the day before from his son, with whom Shannon had ridden to the Tupelo Airport where his son was catching a return flight to New York. When Shannon learned his son was planning to board the plane with the pistol, he retrieved it because he knew it was unlawful to go through airport security with a firearm. Shannon also knew as a prior convicted felon that he could not lawfully possess a firearm himself, and he later stated that he had planned to carry the gun to his mother's house until he could deliver it to his parole officer.

In the early morning hours of August 25, Shannon had left his girlfriend's house and began walking to his

mother's house, purportedly to leave the gun with her. Before he reached the house, he had been stopped and questioned by Sergeant Brown, and this led to Shannon shooting himself. He was indicted for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1).

Before trial, the defense moved to have Shannon declared mentally incompetent to stand trial.[1] The court scheduled a competency hearing, heard expert testimony regarding Shannon's ability to participate in his trial, and concluded that he was able "to understand the nature and consequences of the proceedings against him and to assist properly in his defense." The case proceeded to trial on the defense of insanity. Shannon concedes that the Government presented evidence at trial that, if believed by the jury, was sufficient to prove the essential elements of the crime charged. The jury's role then became the consideration of Shannon's insanity defense.

Shannon concedes he "unquestionably knew as an abstract proposition that it was unlawful for him to possess a firearm." He urges, however, that the question remains whether he appreciated the wrongfulness of his acts under the circumstances prevailing at the time of the offense. Dr. Richard G. Ellis, a psychologist with the Bureau of Prisons, and Dr. Michael D. Roberts, a local clinical psychologist, testified at Shannon's trial regarding

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[1] 18 U.S.C. § 4241, Determination of mental competency to stand trial, establishes the procedure for evaluating whether a defendant is "suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense."

his mental condition at that time. The precise nature of their diagnoses differed, but they both agreed that Shannon suffered from mental illness at the time of trial and possibly at the time of the shooting. Despite their acknowledgment of Shannon's chronic mental problems, however, the experts agreed that Shannon's mental illness was not so severe as to render him legally insane at the time of the offense and thus unable to appreciate the nature, quality, and wrongfulness of his actions.

The court properly instructed the jury on the insanity defense.[2] It refused Shannon's request to inform the jury that an NGI verdict would result in Shannon's involuntary commitment in accordance with §4243(e) of the IDRA.[3] The jury rejected Shannon's insanity defense and

[2] The district court defined "insanity" as follows: "The defendant was insane as the law defines that term only if, as a result of a severe mental disease or defect, the defendant was unable to appreciate the nature and quality or the wrongfullness of his acts. Mental disease or defect does not otherwise constitute a defense." This definition comports with the statutory provisions of 18 U.S.C. § 17.

[3] Section 4243(e) ensures that a federal criminal defendent found not guilty by reason of insanity will not be released onto the streets. It provides that "the Attorney General shall hospitalize the person for treatment in a suitable facility" until a State assumes responsibility for the defendant's care and treatment or until it can be certified that his release will not pose a substantial danger to others or to property.

Shannon's counsel attempted to make this a mandatory confinement known to the jurors. During a jury instruction conference, counsel suggested two alternative instructions: (1) "In the event it is your verdict that the defendant is not guilty only by reason of insanity, it is required that the Court commit the defendant," or (2) "[Y]ou should know that it is required that the Court commit defendant to a suitable hospital facility until such time as the defendant does not pose a substantial risk of bodily injury to another or serious danger to the property of another." The trial judge rejected both versions.

returned a guilty verdict. Because Shannon already had three previous convictions, the district court sentenced him to serve fifteen years without the possibility of probation or parole pursuant to 18 U.S.C. § 924(e)(1). Shannon's appeal is timely.

II. DISCUSSION

This case presents a single issue: did the district court err in refusing to instruct the jury that Shannon would be committed until he was no longer dangerous if the jury found him "not guilty only by reason of insanity"? The issue arises because it is urged that the established law was changed by the IDRA of 1984.

A. *The Law Before the 1984 Act*

[1] The well-established general principle is that a jury has no concern with the consequences of its verdict. As the Supreme Court stated succinctly in *Rogers v. United States*, "the jury [has] no sentencing function and should reach its verdict without regard to what sentence might be imposed." 422 U.S. 35, 40, 95 S.Ct. 2091, 2095, 45 L.Ed.2d 1 (1975). This Circuit has long recognized that punishment and sentencing are matters entrusted exclusively to the trial judge. We have held specifically that juries should not ordinarily be informed about the consequences of an NGI verdict. *See United States v. McCracken*, 488 F.2d 406, 423 (5th Cir.1974) ("Except where a special provision mandates a jury role in assessment or determination of penalty, the punishment provided by law for offenses charged is a matter exclusively for the court and should not be considered by the jury in arriving

at a verdict as to guilt or innocence.").

[2] *McCracken*, a pre-IDRA case, posed an issue similar to the one we face today. We reversed the defendant's murder conviction because the trial court instructed the jury that if it returned an NGI verdict, the defendent would be freed. The jury charge embodied a then-accurate statement of the law; no federal statutory scheme yet provided for the disposition of defendants acquitted due to insanity. We recognized, however, that the court's instruction possibly served to coerce or induce a guilty verdict since jurors at that time were assumed to be fearful of those with mental illness and might convict insane defendants based upon a perceived need to protect society rather than face the risks resulting from their immediate release onto the streets. We lamented that the absence of federal commitment procedures led to heavy reliance upon state authorities to institute commitment proceedings against those acquitted by reason of insanity. We labelled such dependence one of the "the harsh effects of the federal statutory silence."

In the *McCracken* opinion, we noted the District of Columbia Circuit's decison in *Lyles v. United States*, 254 F.2d 725, 728l (D.C.Cir.1957) (en banc), *cert. denied*, 356 U.S. 961, 78 S.Ct. 997, 2 L.Ed.2d 1067 (1958). In *Lyles*, a divided court held that a jury should be informed that such an NGI verdict would result in defendant's involuntary commitment. But a key feature distinguished *Lyles*. The case arose under the D.C.Code, which Congress had amended to provide for mandatory commitment of a defendant

who asserted a successful insanity defense.[4] Despite our apparent appreciation for such a statute, we noted that the absence of comparable federal legislation made the D.C. Circuit's approach inapposite for other circuits. *McCracken*, 488 F.2d at 422. We therefore concluded in *McCracken* that, absent an explicit statutory directive mandating an enhanced jury role, it was inappropriate for jurors to consider possible post-trial punishments. *Id.* at 423.

McCracken was a natural descendant of our earlier decision in *Pope v. United States*, 298 F.2d 507 (5th Cir.1962), *cert. denied*, 381 U.S. 941, 85 S.Ct. 1776, 14 L.Ed.2d 704 (1965). In *Pope*, we affirmed the trial court's refusal to inform the jury about what would occur if they found *Pope* "not guilty only by reason of insanity." There too, we expressly rejected the *Lyles* approach, holding that "[d]ifferent rules and different statutes apply to the Courts of the District of Columbia." *Id.* at 509. Emphasizing our long-standing focus on the unique duties of judges and juries, we said:

> Unless otherwise provided by statute, it is the duty of the court to impose sentence, or make such other disposition of the case as required by law, after the facts have been decided by the jury. To inform the jury that the court may impose minimum or maximum sentence, will or will not grant probation, when a defendant will be eligible for a parole, *or other matters relating to disposition of the defendant*, tend to draw the attention

[4] The Code provision did not by its own terms mandate the giving of such an instruction. *See Lyles*, 254 F.2d at 728-729.

> of the jury away from their chief function as sole judges of the facts, open the door to compromise verdicts and to confuse the issue or issues to be decided. In a case of this nature what they were to decide was whether the defendant was guilty or not.

Id. at 508 (emphasis added).

B. *The IDRA's Impact*

Shannon argues strongly that the trial court's ruling left the jury with no guidance as to the actual implications of its verdict. As a result, the confused jury fell captive to the misconception that only two real options existed—guilty (go to jail) or not guilty/NGI (go free). Because they feared that a dangerous, mentally-ill person would be released if they returned an NGI verdict, they were induced to reject his insanity defense, however meritorious it may have been.[5] Appealing to the *McCracken* court's concern that uninformed and frightened juries might convict while still questioning a defendant's sanity, Shannon urges us to apply "common sense and justice".[6]

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[5] Shannon has not shown that in deliberating, the jury in this case actually entertained these misconceptions, failed to follow the judge's instructions, or considered extraneous factors that colored its verdict.

[6] The instruction Shannon desires could actually work to his disadvantage and cause him more harm than good. As the Third Circuit perceptively noted in *Government of V.I. v. Fredericks:* "A juror who is convinced that a defendant is dangerous, but who believes [the defendant] did not ... commit the [offense] charged, might be willing to compromise on a verdict of not guilty by reason of insanity rather than insist on an acquittal." 578 F.2d 927, 936 (3d Cir.1978). Moreover, a jury could assume that due to overcrowded mental hospitals, strapped social services budgets, sympathetic judges, etc., a defendant will be released

Shannon asserts that Congress's passage of the IDRA constitutes a statutory change that mandates, or at least authorizes, the instruction he seeks. Because the justification for a different rule in different parts of the federal system has now been removed, Shannon argues, the practice announced in *Lyles* must now be applied nationwide. We must disagree that the IDRA alters the calculus. The statute enacted a comprehensive scheme for dealing with insanity in federal criminal cases. Yet it has no provision expanding the jury's role. It has no wording that even touches upon this role. It leaves the jury solely with its customary determination of guilt or innocence.

For support, Shannon cites the Eighth Circuit's opinion in *United States v. Neavill,* 868 F.2d 1000 (8th Cir.), *vacated, reh'g en banc granted,* 877 F.2d 1394 (8th Cir.), *appeal dismissed,* 886 F.2d 220 (8th Cir.1989). In *Neavill,* the panel found that the IDRA permitted it to re-examine former precedent, in which the court had joined this Circuit and others in rejecting the *Lyles* rationale. In reaching its decision, the court relied heavily on a Senate Committee report that endorsed the D.C. Circuit's rationale:

> The [Senate] Committee endorses the procedure used in the District of Columbia whereby the jury, in a case in which the insanity defense has been raised, may be instructed on the effect of a verdict of not guilty by reason of insanity. If a defendant

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footnote 6 continued.
after only a short period of commitment. To combat the prospect of early release, the jury could simply opt to find him guilty. The mandatory instruction Shannon seeks, therefore, seems to be fraught with the same prejudice and jury confusion he wants to avoid.

> requests that the instruction not be given, it is within the discretion of the court whether to give it or not.

S.Rep. No. 98-225, 98th Cng., 1st Sess. 240, *reprinted in* 1984 U.S.Code Cong. & Admin.News 3182, 3422 (footnotes omitted). *Neaville,* however, has no current precedential value. As the citation makes clear, it was vacated by operation of law when rehearing *en banc* was granted and then was dismissed at Neavill's request prior to reconsideration by the full Circuit.

Shannon likewise emphasizes the Act's legislative history and insists that it illustrates Congress's intentions. We agree, however, with the Ninth Circuit's refusal to disregard the statute's clarity by embracing the committee report:

> This statement does not have the force of law nor does it purport to interpret or explain ambiguous language in the statute regarding instructions. *See International Brotherhood of Electrical Workers Local Union No. 474 v. NLRB,* 814 F.2d 697, 712 (D.C.Cir.1987) ("While a committee report may ordinarily be used to interpret unclear language contained in a statute, a committee report cannot serve as an *independent source having the force of law.... [C]ourts have no authority to enforce* principles gleaned *solely* from legislative history that has no statutory reference point." (emphasis in original) (citations omitted)). *United States v. Frank,* 956 F.2d 872, 881 (9th Cir.1991), *cert. denied,* ____ U.S. ____, 113 S.Ct.

363, 121 L.Ed.2d 276 (1992).[7]

In *McCracken,* 488 F.2d at 423, we said that a specific statutory provision was required to justify an enhanced jury role. We do not have it here. The IDRA does not expressly provide that a jury be instructed regarding mandatory commitment procedures. In contrast, Congress explicitly dealt with what juries should be told by way of instruction when a psychiatric defense is raised. 18 U.S.C. § 4242(b) provides:

> If the issue of insanity is raised ... *the jury shall be instructed to find,* or, in the event of a nonjury trial the court shall find the defendant
>
> (1) guilty;
>
> (2) not guilty; or
>
> (3) not guilty only by reason of insanity. (emphasis added)

It is noteworthy that Congress was explicit in directing what issues should be raised, yet said nothing about informing juries of the consequences of any of the three choices. Courts may not properly attempt to discern what Congress, while remaining quiet, assumed would happen. Absent an affirmative statutory requirement that juries be granted a sentencing role, we adhere to the established axiom that it is inappropriate for a jury to consider or be informed about the consequences of its verdict.

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[7] Justice Stevens wrote an opinion "respecting the denial" of the writ of certiorari in *Frank*. He stated that the rule should be that the district court must give the disputed instruction to the jury.

Finally, the other peripheral sources that Shannon cites for support are likewise devoid of statutory anchors and do not compel a different result. Specifically, Shannon notes that the ABA Standards address the issue and recommend that the proposed instruction be given. II ABA Standards for Criminal Justice No. 7-6.8 (2d ed. 1986). Moreover, he insists that the prevailing trend among the states favors requiring or authorizing the instruction. Thomas M. Fleming, Annotation, *Instructions in State Criminal Case in which Defendant Pleads Insanity as to Hospital Confinement in Event of Acquital*, 81 A.L.R. 4th 659, 667 (1990). These sources are no authority to abandon our long-standing precedents without congressional mandate. Our decision today is grounded upon the traditional roles of judges and juries and rooted in the Act's plain language.

Three other circuits have examined the issue. None has taken the passage of the Act to mandate such an instruction. *Frank*, 956 F.2d at 881; *United States v. Blume*, 967 F.2d 45, 49 (2d Cir.1992); *United States v. Barnett*, 968 F.2d 1189, 1192 (11th Cir.1992). Two of the Circuits *permit* judges to provide such information, one in narrow and possibly justifiable circumstances and the other more broadly.

In *Frank*, a divided panel of the Ninth Circuit affirmed the district court's refusal to instruct the jury on the effect of an NGI verdict, holding that the IDRA fails to enlarge the jury's role beyond the traditional guilt/innocence determination. But the Court qualified its holding, concluding that "prosecutorial misconduct" which suggests that those persons found innocent by reason of in-

sanity are released into society properly may warrant a curative instruction to correct the error and abate jury anxiety or confusion. 956 F.2d at 881. In *Barnett*, the Eleventh Circuit followed the holdings of *Rogers* and *McCracken:* "Punishment, or the lack thereof, is a matter entrusted to the trial judge." 968 F.2d at 1192. The opinion does not expressly discuss whether instructional discretion exists in certain cases, but seems to intimate that it does not. A recent panel of the Second Circuit was also divided on the issue. *Blume*, 967 F.2d at 50. Judge Lumbard, writing for the Court, stated that the Senate Committee report's language leaves the instructional decision to the district court's discretion; Judge Newman, writing separately, urges that the instruction should always be given unless the defendant requests its omission, but he adjusted his position to join Judge Lumbard and give the court a majority position in favor of the discretionary approach. Judge Winter, also concurring separately in the result but disagreeing with the NGI analysis, seems to adopt a variety of the *Frank* rationale, urging that the instruction typically should not be given unless the jury has evinced a belief that those acquitted NGI usually go free.

We adhere to our established precedents since there is no statutory directive that opens up to juries a role in the assessment or determination of penalties. We properly are concerned about possible unfortunate consequences of any alteration of the traditional role of the jury. We are convinced that a carefully limited and precise statutory mandate must be required. There is none here.

III. CONCLUSION

We find the established law unchanged by the 1984 Insanity Defense Reform Act. The district court acted properly in refusing an instruction stating the consequences of finding the accused not guilty only by reason of insanity.

AFFIRMED.